

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID J. KATHRENS,) CASE NO. C05-1831-JCC-MAT
Petitioner,) (CR03-515-JCC)
v.)
UNITED STATES OF AMERICA,) ORDER RE: PENDING MOTIONS
Respondent.)

Petitioner, proceeding *pro se* in this 28 U.S.C. § 2255 action, filed a motion for discovery (Dkt. 2), a motion to hold part of his § 2255 motion to vacate in abeyance (Dkt. 3), and a motion for extension of time to respond to respondent’s answer (Dkt. 14). The Court, having considered these motions, and the balance of the record, does hereby find and ORDER:

(1) The Court DENIES petitioner's motion for discovery (Dkt. 2) and his motion to hold part of his motion to vacate in abeyance (Dkt. 3). Both of these motions pertain to petitioner's claims regarding his conviction and sentence. However, because respondent's answer argues solely that petitioner's motion to vacate is untimely, and because that issue is dispositive of this matter, the Court finds no basis for granting petitioner's requests at this time. Petitioner

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01 may renew his discovery request, and the parties may submit supplemental briefing, should
02 petitioner succeed in establishing that the statute of limitations in this matter should be equitably
03 tolled. *See United States v. Battles*, 362 F.3d 1195, 1196-97 (9th Cir. 2004) (in order to establish
04 that the one-year statute of limitations in § 2255 should be equitably tolled, petitioner must show
05 that “extraordinary circumstances beyond [his] control [made] it impossible to file a petition on
06 time and the extraordinary circumstances were the cause of his untimeliness.”) (quoting *Laws v.*
07 *LaMarque*, 351 F.3d 919, 922 (9th Cir. 2003)).

08 (2) The Court GRANTS petitioner’s motion for an extension of time to respond to
09 respondent’s answer (Dkt. 14).¹ However, the Court finds a shorter time period than the sixty
10 days requested appropriate given that petitioner need only respond to the argument that his motion
11 to vacate should be dismissed as untimely. Accordingly, petitioner must file a response to
12 respondent’s answer on or before **March 6, 2006** and respondent’s answer is renoted for
13 consideration on **March 10, 2006**. Respondent may file a reply as of that noting date. *See* Local
14 Civil Rule 7(d)(3).

15 (3) The Clerk shall direct copies of this Order to petitioner, to counsel for respondent,
16 and to the Honorable John C. Coughenour.

17 DATED this 30th day of January, 2006.

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19 
20 Mary Alice Theiler
21 United States Magistrate Judge

22 ¹ The Court did not find a response to this motion from respondent necessary.